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CONTENTS

**The Attitude of Mexico With Reference
to Foreign Corporations**

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The Attitude of Mexico With Reference to Foreign Corporations

By Frederic R. Kellogg, of the New York Bar.

In the spring of this year wide publicity was given in the United States to the draft of the proposed revision of the Mexican Mining Laws, and especially to Section 144 of this draft, in which was contained a prohibition against the acquisition by foreign corporations of any mining rights within the territory of the Mexican Republic; and some uneasiness was caused thereby among stockholders in foreign companies doing business in Mexico.

A brief statement not only of the recent developments with reference to this proposed Mining Law, but concerning the general attitude of the Mexican Republic toward foreign corporations, may, therefore, not be out of place at the present time.

I. AS TO THE PROPOSED MINING LAW.

The protests aroused by the original form of Section 144 were so general that eventually President Diaz submitted the entire question to his Cabinet. As a result it was found that nearly all of the Ministers were opposed to the proposed limitation. The objectionable section was, therefore, withdrawn entirely; and when the new law takes effect there will not be contained in it any such general discrimination against foreign corporations.

There will, however, be a change in the former law affecting their rights. At the present time no foreigners have any right to acquire, without permission of the Federal Government, real property of any nature within a zone of twenty leagues immediately adjoining the boundary of any foreign country. This does not apply to the sea coasts of Mexico, but only to the northern and southern boundary lines. Under the terms of the new law,

however, this will be modified by establishing the provision that no foreign corporation can under any circumstances acquire mining rights within a zone of eighty kilometers adjacent to the boundary lines in question, there being no provision as to a grant of permission by the Government enabling them to hold such rights. Individual citizens of foreign countries, however, may acquire holdings within this zone by permission of the Government; but if they desire to incorporate a company to develop the property once acquired, it will be necessary for them to organize under the corporation laws of the Mexican Republic. In this connection it will be noted that Mexico differs from the United States, in that all corporations are under Federal control, the laws of the respective states having nothing to do with their organization.

Before leaving this branch of the subject it may be noted that in other respects the proposed mining law does not contain any radical provisions. In general, its object, aside from harmonizing and simplifying the various enactments that have been made since the general mineral law was adopted, is to bring all mining property under the control of the Civil Code of the Federal District. At the present time this Code only governs mining mortgages; and in all other points affecting mining property the legislation of each separate state applies to mining properties situated within their borders. Under the new law the Civil Code of the Federal District will govern in all respects.

II. AS TO THE GENERAL ATTITUDE OF THE MEXICAN GOVERNMENT TOWARD FOREIGN CORPORATIONS.

In general, the laws of Mexico have been and are extremely favorable to foreign corporations. With the exception of companies organized to operate within the prohibited zones, along the frontiers, and with the further exception of companies operating under particular concessions from the Government or its departments, the situation has been so especially favorable to foreign corporations as to make it desirable in the majority of instances to operate under foreign charters rather than to organize Mexican companies. Foreign corporations have been not only more easy to manage and finance, but have been cheaper than would

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have been the case if Mexican corporations had been organized for the same purposes.

There is, however, one tendency which has been recently noted on the part of the Government, and especially of the Department of Fomento—which has control of the granting of concessions for all industrial enterprises; and this tendency has been in the direction of insisting upon a provision in any special concessions thus granted whereby if assignments are to be made of such concessions they must be made to Mexican companies. This policy, if it may be so termed, has not up to the present time affected the willingness of the Government to grant concessions to foreign individuals, and it is only when the question of an assignment of these concessions arises for consideration that a desire has been shown to exclude foreign corporations as such assignees.

It is perhaps too much to say that this practice has as yet risen to the rank of a settled policy. It does not depend upon any express statute or provision of the Constitution, and possibly it will not be strictly followed in the future. All predictions upon this point, however, are necessarily vague, it being only certain at the present time, that objections are frequently raised by the Department of Fomento to the granting of special concessions over which it has control and which by their terms are assignable to a foreign corporation. It is felt that this course will more fully assure the control of the Mexican Government over the country's development.

In conclusion, the writer believes it, however, to be certain that whatever may be the results in practice of the present attitude of the Mexican Government or any of its departments toward foreign corporations, or of any settled policy which the Government seems at all likely to adopt in the near future regarding such matters, it would nevertheless be wholly unwarranted to assume that the attitude of Mexico toward foreign corporations and foreign investments is or is likely to be in any degree hostile. On the contrary, the indications are that the policy of the Republic will be to encourage a large increase of foreign investments; and that only where it is considered necessary for the proper protection of local interests will any limitations or restrictions be placed upon the organization or administration of such enterprises.

